

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO, ) No. C 08-3157 JF (PR)  
Plaintiff, ) ORDER OF DISMISSAL  
v. )  
J. TILTON, et al., )  
Defendants. )

Plaintiff, a California prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. Plaintiff seeks monetary damages for alleged constitutional violations during the course of his 1987 state court conviction, and his subsequent denial of parole. Plaintiff's claim is barred under Heck v. Humphrey, 512 U.S. 477 (1994).

## DISCUSSION

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such

1 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. Balistreri v.  
 2 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) a person  
 4 was acting under the color of state law, and (2) the person committed a violation of a right  
 5 secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S. 42, 48  
 6 (1988).

7 B. Plaintiff's Claim

8 Plaintiff alleges that defendants, a state court judge, prosecutors, his attorneys,  
 9 members of the parole board, and various prison officials violated various constitutional  
 10 rights during the course of his 1987 prosecution and conviction and criminal charges in  
 11 state court, and his subsequent denial of parole by the California Board of Parole  
 12 Hearings. Specifically, he alleges that counsel provided him ineffective assistance, that  
 13 defendants breached his plea agreement, that his sentence was improperly aggravated,  
 14 and that he was improperly denied parole. Plaintiff seeks a declaratory judgment that his  
 15 constitutional rights were violated and monetary damages from defendants.

16 In order to recover damages for allegedly unconstitutional conviction or  
 17 imprisonment, or for other harm caused by actions whose unlawfulness would render a  
 18 conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction  
 19 or sentence has been reversed on direct appeal, expunged by executive order, declared  
 20 invalid by a state tribunal authorized to make such determination, or called into question  
 21 by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S.  
 22 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or  
 23 sentence that has not been so invalidated is not cognizable under § 1983. *Id.* at 487.

24 When a state prisoner seeks damages in a § 1983 suit, the district court must  
 25 therefore consider whether a judgment in favor of the plaintiff would necessarily imply  
 26 the invalidity of his conviction or sentence; if it would, the complaint must be dismissed  
 27 unless the plaintiff can demonstrate that the conviction or sentence has already been  
 28 invalidated. *Id.* at 487. Heck makes it clear that a § 1983 "cause of action for damages

1 attributable to an unconstitutional conviction or sentence does not accrue until the  
2 conviction or sentence has been invalidated.” Id. at 489-90 (footnote omitted). In  
3 addition, a challenge to the denial of parole, whether based upon procedural defects in the  
4 parole hearing or upon allegations that parole was improperly denied on the merits,  
5 directly implicates the validity of the prisoner’s continued confinement. See Butterfield v.  
6 Bail, 120 F.3d 1023, 1024 (9th Cir. 1997). Therefore, a claim for damages based on the  
7 improper denial of parole is barred by Heck. See id.

8 Here, plaintiff’s claims that, for example, he received ineffective assistance of  
9 counsel, that his plea bargain was breached, that he was improperly sentenced to an  
10 aggravated term and that he was improperly denied parole would, if successful,  
11 necessarily imply the invalidity of his state court conviction. As such, plaintiff’s claim is  
12 barred by Heck. Plaintiff’s complaint is DISMISSED without prejudice to Plaintiff’s  
13 filing a new complaint if the challenged conviction, sentence and/or parole denial are later  
14 invalidated. See Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995) (claim  
15 barred by Heck may be dismissed sua sponte without prejudice under 28 U.S.C. § 1915).

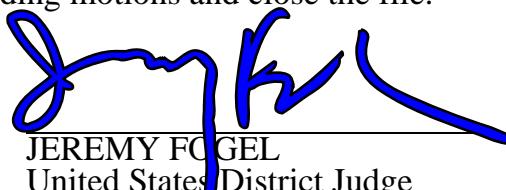
16 **CONCLUSION**

17 Plaintiff’s complaint is hereby DISMISSED without prejudice for failure to state a  
18 cognizable claim for relief under 42 U.S.C. § 1983.

19 The Clerk shall terminate all pending motions and close the file.

20 **IT IS SO ORDERED.**

21 DATED: 8/21/08



JEREMY FOGEL  
United States District Judge